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In re Application of  
SILVERBROOK, Kia  
Application No.: 10/510,092  
PCT No.: PCT/AU02/01061  
Int. Filing Date: 06 August 2002  
Priority Date: 17 June 2002  
Attorney Docket No.: MJ85US  
For: NOZZLE GUARD FOR A PRINTHEAD

DECISION ON PETITION

This decision is in response to applicant's "Petition for Withdrawal of Abandonment" filed on 27 June 2005, which is being treated as a petition under 37 CFR 1.181. No petition fee is required.

**BACKGROUND**

On 06 August 2002, applicant filed international application no. PCT/AU02/01061 which claimed priority date of 17 June 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 December 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, on 17 December 2004.

On 05 October 2004, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: a check in the amount of \$1080; a copy of the international application; an executed declaration; and an assignment for recordation.

On 16 May 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notice of Insufficient Basic National Fee Required and/or Missing Copy of the International Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/912).

On 27 June 2005, applicant filed a petition to withdraw the holding of abandonment under 37 CFR 1.181.

### DISCUSSION

As stated above, applicant filed a transmittal letter requesting entry into the national stage along with a check for \$1080 for the basic national fee. At time of filing, the basic national fee for a large entity for a whose search report was conducted by the Australian Patent Office was \$1110. Since all the requirements under 35 U.S.C. 371(c) had not been met, national stage processing could not commence until the expiration of 30 months from the priority date (17 December 2004).

Effective 08 December 2004, the basic national filing fee was changed to \$300 (\$150 for small entity).<sup>1</sup> Since the time period to pay the basic national fee had not expired, the \$1080 check was applied to the \$300 basic national fee, on 08 December 2004. Hence, the basic national filing fee of \$300 was considered paid on 08 December 2004.

The Notice of Insufficient Basic National Fee Required and/or Missing Copy of the International Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/912) dated 16 May 2005 was mailed in error and is hereby vacated.

### CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The Notice of Insufficient Basic National Fee Required and/or Missing Copy of the International Application under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/912) mailed on 16 May 2005 is hereby **VACATED**.

The application has an international filing date of 06 August 2002 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **08 December 2004**.

This application is being returned to the United States/Designated Elected Office for processing in accordance with this decision.



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<sup>1</sup>Advance Notice Regarding Changes to Patent Fees Under the Consolidated Appropriations Act, 2005 was posted on the USPTO website on December 2, 2004. The public was advised to monitor the USPTO's Internet Web site frequently for current patent fee information pending enactment of the Act. On 08 December 2004, the Act was enacted into law and the basic national fee under 37 CFR 1.492(a) was changed to \$300.